

SBREFA/ Small Entity Outreach Options Paper

General Information:

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), established certain formal procedural and analytical requirements for rules developed by EPA with the potential to impose significant economic impacts on a substantial number of small entities (or the potential to impose "SISNOSE"). The RFA defines "small entity" as a small business, small organization, or small governmental jurisdiction. If the agency cannot certify "No SISNOSE" for a rule, in addition to conducting an initial regulatory flexibility analysis (IRFA), it must convene a Small Business Advocacy Review Panel prior to proposal. The Panel collects the advice and recommendations of small entity representatives that EPA selects, and prepares a report summarizing those comments and setting out the Panel's findings, which the agency is required to consider in developing the proposal. Convening a Panel does not preclude the agency from certifying a rule as "No SISNOSE." The Panel provides an expanded opportunity for small entities to participate in the development of those regulations that directly impact them in a substantial way.

Provisions of the RFA also allow for a final rule to be challenged in court based on the agency's compliance with certain RFA requirements. The Panel process itself is not directly judicially reviewable. However, the "No SISNOSE" certification is judicially reviewable, as is the final regulatory flexibility analysis. A rule can be overturned in court for failure to comply with these requirements.

Key assumptions for confirmation:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5